

Case No. 2021-1072

In the
Supreme Court of Ohio

STATE EX REL. ROBERT “BEN” GRUMBLES,
Relator,

v.

DELAWARE COUNTY BOARD OF ELECTIONS,
Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.Ct.Prac.R. 12.08

RELATOR’S REPLY BRIEF

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INTRODUCTION

Relator Ben Grumbles established that he is entitled to a writ of mandamus to compel the Delaware County Board of Elections to certify his name for placement on the November 2, 2021 ballot as a candidate for the office of Orange Township Board of Township Trustees. *See* Rel. Br. at 6-11. He met the constitutional and statutory requirements to be a candidate for the Board of Trustees as he is a qualified elector and resident of Orange Township, and he timely filed a valid and sufficient candidacy petition. *See id.* The Board of Elections agrees that Mr. Grumbles satisfied these requirements, and the Board even concedes that nothing “explicitly” prohibits Mr. Grumbles from seeking a term of office on the Board of Township Trustees different than the one he currently holds. Resp. Br. at 1. However, after conceding that nothing in the law “explicitly” prohibits Mr. Grumbles from seeking a different term of office on the Board of Township Trustees—a concession that should, alone, resolve this matter—the Board of Elections argues in its brief that there is some sort of implicit prohibition in the law. But this argument is devoid of any basis in the law, and the Court should reject it.

Having met the requirements to run for the Board of Township Trustees and having established that nothing in the law prohibits his candidacy, Mr. Grumbles has a clear legal right to have his name certified for placement on the ballot, and the Board of Elections has a corresponding clear legal duty to submit his candidacy to the voters. Lastly, due to the proximity of the November 2, 2021 election, Mr. Grumbles lacks an adequate remedy in the ordinary course of the law—a point that the Board of Elections also concedes. Resp. Br. at 4. Based on these facts, the Court can and should issue the requested writ of mandamus. Further, because the record shows that the Board acted in bad faith in refusing to certify Mr. Grumbles’s name for placement on the ballot, the Court should award Mr. Grumbles his reasonable attorneys’ fees.

ARGUMENTS IN RESPONSE

I. Nothing in Ohio law prohibits a township official who “already holds” a township office from seeking election a different term of the same office.

After conceding that nothing in Ohio law “explicitly” prohibits a township official who “already holds” a township office from seeking a different term to the same office, the Board of Elections argues that such a prohibition is somehow implicitly set forth in the “statutory scheme” for township trustees. Resp. Br. at 1. The Board’s arguments in support of this implied prohibition are all easily debunked, however, as the “statutory scheme” for township trustees is written in simple terms and contains no such mystery.

A. Ohio does not have a “resign-to-run” regime for its elected officials, including members of boards of township trustees.

Due to the Board’s insistence that there is an implicit prohibition in Ohio law that precludes Mr. Grumbles from “running from cover” for a different term on the Board of Township Trustees, it must be noted that the Ohio Constitution and Ohio Revised Code are entirely silent on the practice—a practice that occurs at every level of government in this state despite the Board’s assertion that this case presents “novel and peculiar” facts.¹ Resp. Br. at 2. Indeed, while a small number of states have so-called “resign-to-run” or “automatic resignation” laws that require

¹ As a recent example from the township level, in 2017, Don Culp was elected to a four-year term on the Miami Township Board of Township Trustees in Montgomery County. Two years later in 2019, he successfully ran for a different four-year term on the same Board of Township Trustees. See, e.g., Miami Township, *Donald Culp*, <https://www.miamitownship.com/347/Trustee-Donald-Culp> (accessed September 5, 2021) (explaining that Trustee Culp was elected to a four-year term in 2017 and then was elected to a different four-year term in 2019); Montgomery County Board of Elections, *November 7, 2017 General Election Summary Report*, at *6 <https://www.montgomery.boe.ohio.gov/download/318/2017/9416/2017-november-7-2017-general-election-election-summary.pdf> (accessed September 5, 2021); Montgomery County Board of Elections, *November 5, 2019 General Election Summary Report*, at *13 <https://www.montgomery.boe.ohio.gov/download/316/2019/9452/2019-november-5-2019-general-election-election-summary-report.pdf> (accessed September 5, 2021).

officeholders to resign from their current office to run for another,² Ohio does not follow such a regime with limited exceptions for judicial officeholders who seek election to a non-judicial office (*see* Jud. Cond. Rule 4.5.) and employees in the civil service (*see* R.C. 124.57).

Instead of a “resign-to-run” regime, Ohio has various dual office-holding restrictions that prohibit certain officeholders from holding more than one public office at the same time. *See, e.g.*, Ohio Const., Art. II, Sec. 4 (restrictions for general assembly members); Art. III, Sec. 14, 15(E) (restrictions for governors); R.C. 3.11 (restrictions for certain county officers); R.C. 731.02 (restrictions for municipal legislative authority members). But these laws do not act to prohibit a sitting officeholder from seeking election to a different term or office. Rather, they simply require the officeholder to have removed the disqualification of holding a different office by the time they assume the new office. *See State ex rel. Vana v. Maple Heights City Council*, 54 Ohio St.3d 91, 94, 561 N.E.2d 909 (1990) (“Under general Ohio election laws, a candidate for public office need not be qualified in order to run for that office, but must remove any disqualifications immediately upon assuming the office.”).

In accordance with these concepts, there is no presumption in Ohio law that Mr. Grumbles must “resign-to-run,” and so long as he does not simultaneously hold two incompatible offices, he will not run afoul of any dual office-holding restrictions.

² Five states have resign-to-run laws: Arizona, Florida, Georgia, Hawaii, and Texas. *See* Ariz.Rev.Stat.Ann. 38-296; Fla.Stat. 99.012; Georgia Const. Art. II, Sec. 2; Hawaii Const. Art. II Sec. 7; Texas Const. Art. 16, Sec. 65(b); *see also Clements v. Fashing*, 457 U.S. 957 (1982) (upholding the constitutionality of the resign-to-run provision in the Texas Constitution).

B. The Board of Elections seeks to upend the well-settled ballot access principle that any elector is eligible to be candidate for public office unless there are specific qualifications or prohibitions that provide otherwise.

Key to the Board of Elections' argument that there is an implicit "resign-to-run" requirement that prohibits Mr. Grumbles from seeking a different term of office on the Board of Township Trustees is its repeated contention that nothing in the Revised Code specifically states that an incumbent township trustee can seek election to different term of office. *See* Resp. Br. at 1. In other words, the Board's proposition is that no elector can run for office unless there is a specific legal provision that expressly contemplates and permits every minutia of the elector's candidacy. But this argument must be rejected because it upends the well-settled ballot access principle in Ohio that any elector is eligible to be a candidate for public office unless there are specific qualifications or prohibitions that provide otherwise. *See, e.g., State ex rel. Fisher v. Brown*, 32 Ohio St.2d 23, 289 N.E.2d 349 (1972) ("Our conclusion is in conformity with the overwhelming majority rule that if the constitutional language does not specify that certain enumerated disqualifications for office extend to a candidacy for that office, a court will not so extend them by construction."); Ohio Atty. Gen. Op. No. 1933-1991 at *1910 ("Anyone who is an elector is eligible to hold public office in the absence of constitutional or statutory qualifications or inhibitions.").³

The Board's argument is also in contravention of the duty to liberally construe ballot access requirements in favor of access to the ballot. This Court has long held that words limiting the right of a person to hold office must be liberally construed so that "the public may have the benefit of

³ The Board attempts to dismiss this Attorney General opinion on the basis that it concerned a township justice of the peace rather than a township trustee. Resp. Br. at 13-15. But it is evident that the ballot access principle summarized by the Attorney General was intended to apply to "anyone" seeking office, not just candidates for township justice of the peace.

choice from all those who are in fact and in law qualified.” *State ex rel. Chance v. Mahoning Cty. Bd. of Elections*, 75 Ohio St.3d 42, 43, 661 N.E.2d 697 (1996) quoting *State ex rel. Schenck v. Shattuck*, 1 Ohio St.3d 272, 274 439 N.E.2d 891 (1982). In the absence of an explicit statutory prohibition for the Court to analyze, there really is no need for the Court to accept the Board of Elections’ invitation to engage in a statutory construction analysis. But if the Court does engage in such an analysis, then construing an entirely silent statutory framework as creating some sort of implicit resign-to-run requirement for township officials would violate the duty to liberally construe ballot access requirements in favor of access to the ballot.

C. Township officials do not have to wait until after the expiration of their term before they can seek election to a different term of office.

In its brief, the Board takes the position that a township official must wait until after the expiration of their term before they are permitted to seek election to a new or different term: “A review of the sections of the Revised Code that provide for the election of township officials does not indicate that a township official may seek election for an office they already hold before the expiration of their term.” Resp. Br. at 6 (emphasis added). Given that elections for four-year terms on the boards of township trustees are always held in the November before the expiring term actually expires on December 31, the Board’s position is effectively that no township trustee could ever seek successive terms of office.

The Board is plainly wrong. The language in R.C. 505.01 that the Board emphasizes says nothing whatsoever about incumbent officials having to wait until the expiration of their term before seeking election to a new term. *See* Resp. Br. at 6. Instead, this language simply provides that the terms of office shall be four years in length. *See id.* The Board cites no other language for its argument that there is some sort of ban on township officials serving successive terms in office, and indeed, there is no such restriction. The General Assembly certainly knows how to create such

a restriction, and if it intended to do so with respect to township officials, it would have expressly said so. Accordingly, the Board's contention must be rejected.

Further, it is apparent that the Board does not even believe what it is arguing to the Court. The Board's brief alludes to the fact that one of the other incumbent members of the Orange Township Board of Township Trustees is also seeking election to the Board of Township Trustees at the November 2, 2021 election. Resp. Br. at 1. The Board certified this incumbent's candidacy without incident even though he, like Mr. Grumbles, "already holds the office" and has a term that will not expire until after the November 2, 2021 election. If the Board truly believed that township officials must wait until after their terms expire to seek election to a new term, then the Board would have also rejected this other incumbent's candidacy for the same reason that it rejected Mr. Grumbles's. But the Board rejected only Mr. Grumbles's candidacy, making it apparent the Board's stated reasoning for doing so was dishonest and pretextual.

D. The terms on boards of township trustees are plainly distinguished from each other based on the staggered election and commencement dates.

The Board also makes much of its argument that all three terms on a board of township trustees are the "same" and "indistinguishable." *See* Resp. Br. at 1, 3, 5-8, 11, 12. Although the Board failed to connect the dots on this argument, the Board seems to contend that because all terms on a board of township trustees are supposedly the "same" and "indistinguishable" from each other, it is somehow an impossibility for Mr. Grumbles to seek election to a "different" term on the Board of Township Trustees.

The Board's assertion that the terms of office on the boards of township trustees are the "same" and "indistinguishable" from each other is easily debunked by R.C. 505.01. This statute plainly distinguishes the terms based on the election and commencement dates:

In each township there shall be a board of township trustees consisting of three members. Two of such trustees shall be elected at the general election in nineteen forty-nine and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election. The third trustee shall be elected at the general election in nineteen fifty-one and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after the person's election.

R.C. 505.01. Two trustees are elected to four-year terms at an election held in an odd-numbered year, and then a third trustee is elected to a four-year term at a different election held two years later. Each term begins on the first of January immediately following the election. Thus, the General Assembly plainly distinguished the terms of office by staggering the election and commencement dates for the trustees.

The Board states that it “could be argued” that the staggering of the term dates for the board of township trustees “is the distinguishing factor.” Resp. Br. at 7. But the Board then baldly asserts that differentiating members of the boards of township trustees based on the dates their terms commence “would mean that the third trustee attains special privileges that the other two trustees do not have.” *Id.* The Board never explains what those “special privileges” would be, and indeed there are no such special privileges; the members of the boards of township trustees have the same statutory powers regardless of the date their term commences with the exception that the trustee chosen as chairperson holds additional powers and duties. *See* R.C. Chapter 505.

The Board also cites *State ex rel. Graves v. Bernon*, 124 Ohio St.294, 178 N.E.267 (1931) for the proposition that boards of township trustees do not have separate, identifiable seats. Resp. Br. at 7-8. The issue in *Graves* was the constitutional validity of a statute requiring a judicial candidate to designate the particular term sought by naming the incumbent he sought to succeed; in the relator-candidate’s case, there were five terms on a municipal court that would all begin and

expire on the same date, but the statute effectively assigned the otherwise indistinguishable terms to the incumbent officeholder by requiring a non-incumbent to name the incumbent they wished to succeed. *Graves*, 124 Ohio St.294. The Court held that this provision violated Ohio's equal protection clause by giving an unfair advantage to the incumbent officeholders because under the system, the incumbents could be re-elected even if they were not one of the top-five vote-getters. *Id.* at 299.

The Court's opinion in *Graves* does not support the Board's position for multiple reasons. First, *Graves* in no way addresses the concept or effect of staggered terms; it dealt only with multiple, identical terms to the same office that were up for election at the same time. Next, the takeaway from *Graves* is that when there are identical terms to the same office that are up for election at the same time, it is a violation of equal protection for the law to assign individual terms to the incumbent officeholder on the basis of their incumbency. That is not an issue in the instant action as Mr. Grumbles has never claimed the right to seek election to one particular seat on the Board of Township Trustees. Consistent with R.C. 505.01, he seeks to win either of the identical terms up for election on November 2, 2021 by being one of the top-two vote-getters. If anything, the Court's opinion in *Graves* shows that the Board of Elections has violated Mr. Grumbles's equal protection rights by treating him differently and to his disadvantage based on his status as an incumbent officeholder. But because this matter is easily resolved on non-constitutional grounds, the Court need not reach this issue.

It is apparent that the Board is being duplicitous with this argument, as well. After all, the only distinction between Mr. Grumbles, whose candidacy the Board rejected, and the other incumbent trustee, whose candidacy the Board certified, are their terms' election and commencement dates. Mr. Grumbles' current term began on January 1, 2020 and will expire on

December 31, 2023, while the other incumbent's current term commenced on January 1, 2018 and will expire December 31, 2021.

Accordingly, there is no validity to the Board's assertion that all terms on boards of township trustees are the "same" and "indistinguishable" from each other.

E. The process to fill a vacancy on a board of township trustees is wholly irrelevant to the determination of ballot access.

The Board also makes much of the process by which a hypothetical vacancy on the Board of Township Trustees would be filled if Mr. Grumbles is elected to a new term at the November 2, 2021 election and resigns his current term. Resp. Br. at 12-13. But the appointment process is wholly irrelevant to the determination of whether Mr. Grumbles is qualified to run, and the Board failed to cite any authority whatsoever for its proposition that it should be a consideration for elections officials in determining candidates' qualifications. Indeed, such a consideration is strictly one that must be left to the voters even though the Board suggests that such a concept would be too difficult for Orange Township voters to understand. *See* Resp. Br. at 13

The Board also incorrectly suggests that the boards of township trustees are unique in that vacancies are filled by the remaining members of the board. Resp. Br. at 13. Under the Revised Code, vacancies on certain municipal legislative authorities, village councils, and city and local boards of education are all filled by the remaining members of the body. *See* R.C. 731.43(C) (nonpartisan municipal legislative authority); R.C. 731.43(A) (village legislative authority); R.C. 3313.11 (city and local boards of education). There are no resign-to-run laws for these offices either, and it is entirely possible for an incumbent to run from cover for a new term and then participate in the ensuing appointment process. If the General Assembly wanted to prohibit such a scenario, then it would have said so, but it has not. Thus, the Board's contention that the process

by which vacancies are filled on boards of township trustees is somehow unique and indicative of some implied resign-to-run requirement is nonsense and must be rejected.

For all these reasons, it is clear that Ohio law does not prohibit Mr. Grumbles from seeking a different term on the Board of Township Trustees due to the fact that he “already holds” the office.” It was therefore an abuse of the Board’s discretion and/or in clear disregard of applicable law to refuse to certify Mr. Grumbles’s candidacy on the basis that he “already holds” the office, and the Court should issue the requested writ of mandamus.

II. Mr. Grumbles established that the Board of Elections acted in bad faith, and he is therefore entitled to an award of his reasonable attorneys’ fees and expenses.

The Board of Elections’ proffered arguments for rejecting Mr. Grumbles’s candidacy are so farfetched and fantastical that they can only be considered pretextual, not a bona fide interpretation or application of the laws governing access to the ballot. What the record demonstrates is that Board simply disagrees with what Mr. Grumbles is doing and, therefore, will not certify him for the ballot unless a Court orders it. That is bad faith.

As set forth more fully in Mr. Grumbles’s Merit Brief, the Board invented a prohibition to keep Mr. Grumbles off the ballot at its August 16, 2021 meeting, and the Board’s Chair made a remark that Mr. Grumbles could just sue the Board to get back on the ballot. *See* Rel. Merit Br. at 11-17. The Board’s representatives then refused to tell Mr. Grumbles the legal reasoning behind the prohibition, prompting the email exchange cited in the Board’s brief. Resp. Br. at 19. Subsequently, at the reconsideration hearing, the Board and its attorneys remained unable to cite any legal authority to support its made-up prohibition. Despite this, one of the Board Members went as far as to ask Mr. Grumbles to resign from his current term to comply with the Board’s made-up requirement. *See* Rel. Merit Br. at 13.

The additional explanations provided in the Board's brief only further buttress the conclusion that the Board acted in bad faith in rejecting Mr. Grumbles's candidacy. For instance, the Board claims to have had a good faith belief that members of a board of township trustees are not permitted to seek election to a new or different term until *after* the expiration of their current terms, and that this is why they did not certify Mr. Grumbles's candidacy. However, the Board still certified the candidacy of another incumbent trustee even though this incumbent also will not have completed his current term prior to the November 2, 2021 election. The Board also insists that it had "determined" that all three terms of the Board of Township Trustees were the "same" and "indistinguishable" from each other, and that this somehow made it impossible for them to certify Mr. Grumbles's candidacy for a "different" term. Given that the terms of office are plainly staggered, the Board's insistence that this determination was made in good faith strains credulity.

The Board continued to build off its absurd argument that terms on boards of township trustees are all the "same" and "indistinguishable" in its attempt to distinguish Mr. Grumbles' candidacy from the 2014 candidacy of Ken O'Brien. As explained more fully in Mr. Grumbles's Merit Brief, Mr. O'Brien had been elected to a four-year term on the board of county commissioners in 2012, and in 2014, the Board certified his candidacy for a different four-year term on the board of county commissioners. Rel. Merit Br. at 14-16. In other words, the Board allowed Mr. O'Brien to do exactly what it claims Mr. Grumbles is prohibited by law from doing, further highlighting the Board's disingenuous reasoning for rejecting Mr. Grumbles's candidacy. At the reconsideration and in its brief, the Board acknowledged the O'Brien candidacy but tried to distinguish it on the basis that each county commissioner seat is for a different term, which does not make sense logically given that Mr. Grumbles' candidacy is also for a different term than the one he currently holds. *Id.*

The Board then attempts to absolve its bad faith by claiming that this is a case of first impression, but a board of elections does not get carte blanche to invent and selectively enforce ballot access requirements by claiming “first impression.” Resp. Br. at 19. As an initial matter, this is not even a case of first impression. Courts and the Ohio Attorney General have long explained that an elector is eligible to hold public office unless a specific law prohibits it. Indeed, the Ohio Attorney General opinion provided to the Board ahead of its reconsideration hearing shows that courts had settled this by the late-19th Century. *See* Ohio Attorney General Opinion 1933-1991 at *1911 quoting *State ex rel. Prosecutor v. Wagar*, 19 Ohio C.C. 149, 151, 10 Ohio Cir. Dec. 160 (1899) (“One who is an elector is entitled to hold office to which he is elected, unless the statute forbids. There must be a provision of the statute forbidding his holding the office.”). More to the point, even if this is the first time a court has addressed the specific fact pattern of a township trustee seeking to run for a different term of office, the Board still had an obligation to make a reasoned decision based on existing legal requirements. And in this instance, the law clearly set forth requirements to run for a term on a board of township trustees—requirements the Board always acknowledged that Mr. Grumbles met—while the law clearly did not set forth any prohibition or disqualification that the Board describes.

Accordingly, the Court should find that the Board acted in bad faith in rejecting Mr. Grumbles’s candidacy and award Mr. Grumbles his reasonable attorneys’ fees and expenses.

CONCLUSION

For all the reasons set forth above and in Mr. Grumbles’s Merit Brief, Mr. Grumbles respectfully requests the Court to issue a writ of mandamus to compel the Delaware County Board of Elections to certify his name for placement on the November 2, 2021 general election ballot as a candidate for the Orange Township Board of Township Trustees. Additionally, because the

Board of Elections acted in bad faith in rejecting Mr. Grumbles's candidacy, the Court should grant Mr. Grumbles an award of his reasonable attorneys' fees and expenses.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via email on September 7, 2021 upon the following:

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APPENDIX OF CITED AUTHORITY

Ariz.Rev.Stat.Ann. 38-296

- A. Except during the final year of the term being served, no incumbent of a salaried elective office, whether holding by election or appointment, may offer himself for nomination or election to any salaried local, state or federal office.
- B. An incumbent of a salaried elected office shall be deemed to have offered himself for nomination or election to a salaried local, state or federal office on the filing of a nomination paper pursuant to section 16-311, subsection A. An incumbent of a salaried elected office is not deemed to have offered himself for nomination or election to an office by making a formal declaration of candidacy for the office.
- C. The resignation of the incumbent elective officer duly filed in writing with the officer, board or commission having jurisdiction of the office, if not accepted within ten days, shall be deemed to have become effective as of the date of filing.
- D. This section shall not be construed to prohibit a person whose resignation from office has become effective from qualifying as a candidate for another office during the unexpired portion of the term affected by the resignation, nor shall it apply to any incumbent elective officer who seeks reelection to the same office or to any other public office during the final year of the term to which the person has been so elected.
- E. A person violating any provision of this section is guilty of misfeasance in office, and the office held by such person shall be declared vacant.

Fla.Stat. 99.012

(1) As used in this section:

(a) “Officer” means a person, whether elected or appointed, who has the authority to exercise the sovereign power of the state pertaining to an office recognized under the State Constitution or laws of the state. With respect to a municipality, the term “officer” means a person, whether elected or appointed, who has the authority to exercise municipal power as provided by the State Constitution, state laws, or municipal charter.

(b) “Subordinate officer” means a person who has been delegated the authority to exercise the sovereign power of the state by an officer. With respect to a municipality, subordinate officer means a person who has been delegated the authority to exercise municipal power by an officer.

(2) No person may qualify as a candidate for more than one public office, whether federal, state, district, county, or municipal, if the terms or any part thereof run concurrently with each other.

(3)(a) No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds.

(b) The resignation is irrevocable.

(c) The written resignation must be submitted at least 10 days prior to the first day of qualifying for the office he or she intends to seek.

(d) The resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or
2. The date the officer’s successor is required to take office.

(e)1. An elected district, county, or municipal officer must submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer must submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers must submit their resignations to the Governor with a copy to the Department of State.

(f)1. With regard to an elective office, the resignation creates a vacancy in office to be filled by election. Persons may qualify as candidates for nomination and election as if the public officer’s term were otherwise scheduled to expire.

2. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer’s resignation may be filled for that portion of the officer’s unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(g) Any officer who submits his or her resignation, effective immediately or effective on a date prior to the date of his or her qualifying for office, may then

qualify for office as a nonofficeholder, and the provisions of this subsection do not apply.

(4)(a) Any officer who qualifies for federal public office must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted at least 10 days before the first day of qualifying for the office he or she intends to seek.

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or
2. The date the officer's successor is required to take office.

(e)1. An elected district, county, or municipal officer shall submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer shall submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers shall submit their resignations to the Governor with a copy to the Department of State.

(f)1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

a. The officer before whom he or she qualified if the officer held an elective office; or

b. The officer or authority who appointed him or her if the officer held an appointive office.

(g) Notwithstanding the provisions of any special act to the contrary, with regard to an elective office, the resignation creates a vacancy in office to be filled by election, thereby authorizing persons to qualify as candidates for nomination and election as if the officer's term were otherwise scheduled to expire. With regard to an elective charter county office or elective municipal office, the vacancy created by the officer's resignation may be filled for that portion of the officer's unexpired term in a manner provided by the respective charter. The office is deemed vacant upon the effective date of the resignation submitted by the official in his or her letter of resignation.

(5) A person who is a subordinate officer, deputy sheriff, or police officer must resign effective upon qualifying pursuant to this chapter if the person is seeking to qualify for a public office that is currently held by an officer who has authority to appoint, employ, promote, or otherwise supervise that person and who has qualified as a candidate for reelection to that office.

(6) If an order of a court that has become final determines that a person did not comply with this section, the person shall not be qualified as a candidate for election and his or her name may not appear on the ballot.

(7) This section does not apply to:

(a) Political party offices.

(b) Persons serving without salary as members of an appointive board or authority.

(8) Subsections (3) and (4) do not apply to persons holding any federal office.

Subsection (4) does not apply to an elected officer if the term of the office that he or she presently holds is scheduled to expire and be filled by election in the same primary and general election period as the federal office he or she is seeking.

Georgia Const. Art. II, Sec. 2

Paragraph V. Vacancies created by elected officials qualifying for other office. The office of any state, county, or municipal elected official shall be declared vacant upon such elected official qualifying, in a general primary or general election, or special primary or special election, for another state, county, or municipal elective office or qualifying for the House of Representatives or the Senate of the United States if the term of the office for which such official is qualifying for begins more than 30 days prior to the expiration of such official's present term of office. The vacancy created in any such office shall be filled as provided by this Constitution or any general or local law. This provision shall not apply to any elected official seeking or holding more than one elective office when the holding of such offices simultaneously is specifically authorized by law.

Hawaii Const. Art. II Sec. 7

Any elected public officer shall resign from that office before being eligible as a candidate for another public office, if the term of the office sought begins before the end of the term of the office held.

Texas Const. Art. 16, Sec. 65

(a) This section applies to the following offices: District Clerks; County Clerks; County Judges; Judges of the County Courts at Law, County Criminal Courts, County Probate Courts and County Domestic Relations Courts; County Treasurers; Criminal District Attorneys; County Surveyors; County Commissioners; Justices of the Peace; Sheriffs; Assessors and Collectors of Taxes; District Attorneys; County Attorneys; Public Weighers; and Constables.

(b) If any of the officers named herein shall announce their candidacy, or shall in fact become a candidate, in any General, Special or Primary Election, for any office of profit or trust under the laws of this State or the United States other than the office then held, at any time when the unexpired term of the office then held shall exceed one year and 30 days, such announcement or such candidacy shall constitute an automatic resignation of the office then held, and the vacancy thereby created shall be filled pursuant to law in the same manner as other vacancies for such office are filled.